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**FISCAL IMPACT STATEMENT**

**LS 7476**

**BILL NUMBER:** HB 1656

**NOTE PREPARED:** Feb 9, 2009

**BILL AMENDED:** Feb 5, 2009

**SUBJECT:** State and Local Highway Funding.

**FIRST AUTHOR:** Rep. Austin

**FIRST SPONSOR:**

**BILL STATUS:** 2<sup>nd</sup> Reading - 1<sup>st</sup> House

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☒ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill does the following:

*Public Works Contracts:* The bill provides that the goal for a public works project is to award the contract to a contractor who: (1) employs residents of Indiana as at least 90% of the employees working on the contract; and (2) enters into subcontracts with subcontractors that employ residents of Indiana as at least 90% of the employees working on the contract. It applies this goal to contracts entered into by the Public Works Division (PWD) of the Department of Administration, any state agency or commission entering into a public works contract, the Commission governing the Ports of Indiana, the Department of Transportation (INDOT), and units of local government.

*Reporting Requirements:* The bill requires the Commissioner of the Department of Administration to prepare an annual report for the public and the Legislative Council stating, for the contractors awarded public works contracts by the state and the subcontractors with which these contractors entered into subcontracts, the percentage of the contractors' and subcontractors' employees working on the public works contracts who are residents of Indiana.

*Indiana Preference:* It requires certain public works projects to use Indiana-produced steel or foundry products and materials, equipment, and durable goods made in Indiana.

*Tolling:* It prohibits tolling on an interstate highway project between Interstate Highway 465 and Interstate Highway 64. It also prohibits the state from issuing a request for proposals for, or entering into, a public-private agreement concerning a project between Interstate Highway 465 and Interstate Highway 64.

*Appropriations - Highway Projects:* The bill annually appropriates money for numerous listed highway

projects.

Local Government: The bill also appropriates \$500 M from designated federal funds to INDOT for grants to counties, cities, and towns for each of the following periods:

(1) July 1, 2008, to June 30, 2010.

(2) July 1, 2010, to June 30, 2011.

Community Infrastructure Assistance Program: The bill requires INDOT to establish a community infrastructure assistance program. It appropriates \$10 M from federal funds for the program for each of the following periods:

(1) July 1, 2008, to June 30, 2010.

(2) July 1, 2010, to June 30, 2011.

Adult Workforce Training Grant Program: The bill establishes an adult workforce training grant program, and it appropriates federal funds for the program.

Higher Education Institution Building Projects: It appropriates federal funds for certain university building projects.

Next Generation Trust Fund: The bill appropriates \$500 M from the Next Generation Trust Fund (NGTF), and it specifies certain conditions for the use of the money.

*Repeal:* This bill repeals P.L. 234-2007, SECTION 26.

**Effective Date:** (Amended) Upon passage; July 1, 2008 (retroactive); July 1, 2009.

**Explanation of State Expenditures:** (Revised) *Public Works Contracts:* The bill would have indeterminate fiscal impact on public works projects. The bill establishes a goal for entering into contracts with contractors or subcontractors that provides that 90% of the employees are Indiana residents. Contracts awarded to a contractor or subcontractor that fail to maintain the required proportions of Indiana residents may be terminated without cause.

*Public Works Contracts-Reporting Requirements:* Before August 15 of each year, beginning in 2010, the PWD, state agencies or commissions entering into a public works contract, the Ports of the Indiana Commission, and the INDOT are to report to the Commissioner of the Department of Administration on the percentage of employees employed by contractors or subcontractors who work on each contract and who are residents of Indiana. The Commissioner is to compile and make available this information for the public and the Legislative Council before October 1 of each year.

*Indiana Preference:* The bill could increase the cost of public works projects for public agencies by providing a differential of either 15% or 25% of the bid or offered price of a material, equipment, or durable good of foreign origin. The bill allows the public agency head contracting for the construction, reconstruction, alteration, repair, improvement, or maintenance of a public works project to determine in writing that using material, equipment, or durable goods made in Indiana would benefit the state or local economy and increase the differential from 15% to 25%; or that there are not sufficient quantities of Indiana-made goods to meet the public works project requirements thereby not applying the Indiana requirements to the public works contract.

The bill also removes a preference for United States steel and foundry products and, instead, applies the preference to Indiana-made steel and foundry products.

Further, the bill requires the DOA to develop criteria to determine whether steel or foundry products are produced in Indiana and to develop criteria for determining whether materials, equipment, and durable goods are produced in Indiana. It requires the DOA to publish the criteria and maintain a list of businesses and products that meet the criteria on its website.

The reporting requirements, criteria development, and list maintenance could minimally increase costs to the DOA and other contracting agencies. The funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

(Revised) *Appropriations* - Highway Projects: Between FY 2009 and FY 2015, the bill makes annual appropriations of money from the Major Moves Construction Fund (MMCF), federal funds, and other revenues available to the INDOT for the completion of the projects listed in the bill. The appropriations do not revert to the MMCF or the state General Fund, but remain available to the INDOT until the purposes of the appropriation are fulfilled. The projected total cost of projects listed in the bill is \$7.5 B.

(Revised) Local Government: In each of two periods, the bill appropriates \$500 M from federal funds to INDOT to make grants to counties, and cities and towns. The bill allocates \$250 M to counties and \$250 M to cities and towns using the Motor Vehicle Highway Account formula in two periods, FY 2009 - FY 2010 and FY 2011. The federal funds will come from the federal Highway Bridge Program, the Equity Bonus Program, and the Surface Transportation Program, and any grants apportioned to Indiana for transportation purposes under the American Recovery and Reinvestment Act of 2009 or other federal economic stimulus law. The funds appropriated to the INDOT do not revert to the state General Fund or to another fund, but may be used by the INDOT until the purposes for which the funds were appropriated are fulfilled.

[Indiana was apportioned \$578.9 M in FFY 2008 and \$593.8 M in FFY 2009 from the three named federal programs.]

(Revised) Community Infrastructure Assistance Program: The bill appropriates \$10 M to the INDOT from the federal American Recovery and Reinvestment Act of 2009 or any other federal economic stimulus law enacted in 2009 in two periods, FY 2009 - FY 2010 and FY 2011. From the funds, the INDOT will establish a community infrastructure assistance program to provide technical and engineering assistance and guidance to local government to qualify for economic stimulus funds, other federal funds, or other funds for transportation purposes.

(Revised) Adult Workforce Training Grant Program and Higher Education Institution Building Projects: The bill appropriates to the Department of Workforce Development (DWD) an amount sufficient to provide adult workforce grants, and to various higher education institutions an amount sufficient to carry out repair and rehabilitation of facilities projects. The appropriations are made from Indiana's apportionment of grants to the states for dislocated workers employment and training activities, and from the grants to the states for the purpose of modernizing, renovating, and repairing institutions of higher education facilities, respectively, under the federal American Recovery and Reinvestment Act of 2009 or another federal economic stimulus

law enacted in 2009. The funds appropriated are in addition to any other money available to the DWD for this purpose. The State Budget Agency may determine that funds not allocated or encumbered by a higher education institution within two biennia are not available for allotment. The appropriation may be terminated and the balance revert to the fund from which it was originally appropriated.

(Revised) Next Generation Trust Fund: The bill makes appropriations from the state Next Generation Trust Fund (NGTF) of \$500 M for the period May 1, 2009, to June 30, 2011. Counties, and cities and towns receive \$250 M each. The money appropriated may not include any money that is appropriated and allotted to, appropriated to, or planned by the INDOT for expenditure on the extension of I-69 from Indianapolis to Evansville or the construction of new Ohio River bridges on I-65 and I-265.

#### Background and Additional Information -

*Public Works Contracts- Resident of Indiana:* A resident of Indiana is defined as a person at least 18 years old and who has a registered motor vehicle in Indiana, is registered to vote in Indiana, has a child enrolled in an elementary or secondary school in Indiana, or who derives more than one-half of the person's gross income from sources in Indiana. However, if a person only meets the income factor, the person may not be a resident of Indiana if the preponderance of the evidence of the first three factors is not met.

*Contractor and Subcontractor Qualifications:* Currently, the PWD requires contracts and subcontractors to be certified prior to bidding or performing work under contract for which the cost is estimated at more than \$150,000. INDOT requires a form outlining the contractor's experience and financial condition for prequalification before bidding on contracts for the maintenance or construction of highways, bridges, and appurtenances.

*Indiana Preference- Steel and Foundry Products:* For CY 2008 the state had about \$59 M in public works projects; a rough estimate is that \$30 M of the projects involved steel or foundry products, and steel and foundry product costs were about 15% of the project costs. There is a 15% premium for the use of United States steel and foundry products, resulting in an estimated premium expense of \$675,000, or about 2.3% of the new construction costs. Steel made in the United States is stamped with the country of origin, but the state of origin of steel or foundry products is not as readily available, and the DOA does not track the state of origin currently.

*Material, Equipment, or Durable Goods:* Generally, public works project costs are 50% materials and 50% labor. (Equipment is purchased separately through the Procurement Division, which would increase the amount of materials used in the project.) Using the information above, about \$25 M was spent on materials in CY 2008. Assuming a 15% premium for the use of Indiana-made material, equipment, or durable goods, the maximum cost of the Indiana-made premium would have been about \$3.8 M.

*Department of Administration:* In FY 2008, the DOA reverted \$28,742 to the state General Fund. On January 19, 2009, the DOA had 25 vacant positions with a combined salary of \$634,244.

(Revised) *Appropriations - Highway Projects:* In 2006, the INDOT prepared two listings of projects projected to be completed between FY 2006 and FY 2015; one was titled, "Major New Highway Construction", and the other was titled, "Major Pavement Preservation Program". Both of these listings are codified in statute under the bill and the INDOT will receive an annual appropriation for completion of the projects between FY 2009 and FY 2015. The total projected project costs are shown in the table below.

<b>Fiscal Year</b>	<b>Major New Highway Construction</b>	<b>Major Pavement Preservation Program</b>	<b>Total Annual Costs</b>
2009	\$659,863,794	\$220,059,135	\$879,922,929
2010	775,421,095	182,631,187	958,052,282
2011	753,567,274	374,717,579	1,128,284,853
2012	793,636,062	386,270,675	1,179,906,737
2013	829,323,657	303,394,176	1,132,717,833
2014	812,069,913	302,728,432	1,114,798,345
2015	<u>873,938,881</u>	<u>210,604,440</u>	<u>1,084,543,321</u>
<b>Total</b>	<b>\$ 5,497,820,676</b>	<b>\$ 1,980,405,624</b>	<b>\$ 7,478,226,300</b>

In planning, Major New Highway Construction projects were to be funded from the MMCF, and federal and other state resources used for the Major Pavement Preservation Program. Under the bill, MMCF in addition to federal funds and other revenues available to the INDOT may be applied to all the listed projects.

The MMCF had a balance of \$2.0 B on February 2, 2009. Estimates of current statutory obligations and appropriations result in available funds of about \$1.56 B in the MMCF.

(Revised) Adult Workforce Training Grant Program: The DWD will provide grants of up to \$3,000 per year for not more than two years for tuition and related expenses at a qualified educational program. The grantee must enter into an agreement with the DWD that the grantee will repay the grant if the program is not successfully completed, the grantee will keep the DWD informed of academic progress, and any other reasonable conditions set by the DWD. The DWD disburses money directly to the educational institution, if possible, and prescribes the manner in which the grantee applies.

(Revised) Higher Education Institution Building Projects: The following projects would receive sufficient funds from a federal economic stimulus law.

<u>Item</u>	<u>Higher Education Institution</u>	<u>Project</u>	<u>Estimated Cost</u>
1.	Indiana University South Bend	Education and Arts Building	\$27,000,000
2.	University of Southern Indiana	General R&R Projects	\$560,963
3.	Indiana State University	General R&R Projects	\$2,340,990
4.	Purdue University	General R&R Projects	\$4,944,331
5.	Indiana University Bloomington	General Infrastructure R&R Projects	\$1,500,000
6.	Indiana University Bloomington	Wright School of Education Roof Replacement	\$1,250,000
7.	Purdue University West Lafayette	Utility Tunnel Repairs and Waterproofing Phase 1-C	\$1,356,500
8.	Vincennes University	General R&R Projects	<u>\$1,136,484</u>
<b>Total:</b>			<b>\$40,089,268</b>

(Revised) Next Generation Trust Fund: On February 5, 2009, the balance in the NGTF was approximately \$551 M. This would leave a balance in the fund of \$51 M after the appropriation to counties, cities, and towns. Under current law, the principal of the NGTF does not diminish, but the NGTF pays its available interest to the Major Moves Construction Fund each five years beginning on March 15, 2011.

**Explanation of State Revenues:** *Tolling:* The bill prohibits tolling on the extension of I-69 between Indianapolis and Evansville. To the extent that additional state funds are needed to complete construction of the highway, this potential funding source would be unavailable.

(Revised) *Infraction:* The bill establishes a Class B infraction if a contractor or subcontract for the INDOT does not maintain the proper ratio of Indiana residents working on the contract. If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class B infraction is \$1,000, which is deposited in the state General Fund.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), the public defense administration fee (\$3), the court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

**Explanation of Local Expenditures:** *Public Works Contracts and Indiana Preference:* The proportions of Indiana residents employed by contractors and subcontractors would apply to local unit public works contracts. Also, the preference for using material, equipment, or durable goods made in Indiana applies to local units. This would have indeterminate fiscal impact on local public works projects.

**Explanation of Local Revenues:** (Revised) *Appropriations* - Local: Counties, and cities and towns would each receive \$250 M allocated using the Motor Vehicle Highway Fund formula in two time periods, FY 2009 - FY 2010 and FY 2011. The county, city, or town will account for the funds separately and must only use the funds for the federally designated purpose of the funds. A county, city, or town must obligate 50% of funds before September 1, 2009, and the remaining 50% of the funds before September 1, 2010. Any funds not obligated in conformity with the law lapse and may be used for any purpose for which the funds may be used.

(Revised) Next Generation Trust Fund: The bill appropriates \$250 M to counties distributed pro rata based on population data from the Local Road and Street Account and \$250 M to cities and towns based on population data from the Motor Vehicle Highway Account distribution. The money may be used for construction, reconstruction, or maintenance of streets and alleys. The county, city, or town must appropriate the funds to shovel-ready projects before January 1, 2011. Any money not appropriated is returned to the NGTF by February 1, 2011.

(Revised) *Infraction*: If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** DOA; Any state agency or commission entering into a public works contract; Ports of Indiana; INDOT.

**Local Agencies Affected:** Cities, towns, and counties; Local units entering into public works contracts; Trial courts, local law enforcement agencies.

**Information Sources:** Chris Kiefer, INDOT; Elizabeth Lerch, DOA; Budget Agency Auditor's Data, February 2, 2009; INDOT, *Major New Highway Construction, 2006-2015*, Updated May 16, 2006; INDOT, *Lease Proceeds - Major Moves Report*, July 30, 2008 and January 29, 2009.

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